LETTER

Mr John Scott
Advocate

To the PARTNERS of

Meſſ. DOUGLAS, HERON, and COMPANY.

In anſwer to a LETTER addreſſed to them, of 12th March 1779, under the ſignature of JOHN FORDYCE.

From a FELLOW-PARTNER.

1779.

LETTER

To the PARTNERS of

Meſſ. DOUGLAS, HERON, and COMPANY.

June 18. 1779.

FELLOW-PARTNERS,

THE hiſtory of our wonderful affairs, and of the ſingular misfortunes which have been the unhappy reſult of a bad ſyſtem of management, has been lately communicated to us in the Report of the Committee of Inquiry, which has been printed by authority of a general meeting of the Partners, and which I doubt not has been attentively peruſed by many of you. By means of it, our affairs have been recovered from an obſcurity and confuſion, which had, in a good meaſure, rendered them unintelligible. A clear and authentic view is given us, of the cauſes and progreſs of our diſtreſs; and as it abounds with a variety of important matter, worthy of moſt ſerious attention, it may juſtly be conſidered to form no inconſiderable branch of our affairs.

The extinction of our engagements to the public, as recommended in the concluſion of the Report, and the recovery of the proper funds of the Company, in ſo far as practicable, are, no doubt, objects of the firſt concern, which I am hopeful a ſteady management, and an unanimous exertion of the Partners, will ſoon accompliſh. But the redreſs of injuries ſuſtained, if within the reach of legal remedy, ſeems to be a branch of our affairs

which no leſs demands a firm and ſteady attention. The treatment we have received; the unexampled diſtreſſes which we have already ſuffered, and under which we ſtill labour, have placed us in a ſituation, which not only gives us an undoubted title, but ſuggeſts it as an eſſential duty, to pay the ſtricteſt attention to our intereſt in this laſt particular. Dupes as we have been to the follies and artifices of others, it is a duty which we owe to ourſelves, to our families, to our friends, to our own reputation, to preſerve our fortunes as far as we can, and to vindicate our character, and our conduct, as Men, though at the expence of our prudence and ſagacity as Partners.

Among a multitude of inſtances of improper conduct, and of flagrant abuſes committed by our Directors, in every branch of management, there is one particularly taken notice of in the Report, which ſeems to be of a very deep nature to the parties intereſted, I mean that which reſpects the tranſactions of compoſition, entered into in 1772, by ſome of our Directors, with the houſe of Charles Ferguſſon and Company, and with John Fordyce, and the other partners of the houſes under the firm of *Fordyce, Malcolm, and Company*, and *Fordyce, Grant, and Company*.

It appears, that Charles Ferguſſon and Company, at the period of their failure in June 1772, had become indebted to the Edinburgh branch of Douglas, Heron, and Company, in upwards of L. 13,000; and that Mr Fordyce, and the houſes above mentioned, in which he was concerned, had become indebted to that Branch in upwards of L. 22,000.

Upon occaſion of the failures which happened at that fatal period, propoſals were made in behalf of Charles Ferguſſon and Company, and of Mr Fordyce and his Partners, for paying certain compoſitions to their creditors, in full of their debts. The former offered a compoſition of 5 s. in the pound, the latter a compoſition of 6 s. 6 d. a-pound; but this laſt was made payable at ſuch diſtant terms, that the real preſent value of it was conſiderably diminiſhed.

Application having been made to ſome of our Directors, in behalf of the bankrupts, ſoliciting them to accede to the propoſed compoſitions in name of the Company, they thought proper to do ſo, without conſulting their conſtituents; and the compoſition-money having been afterwards paid into the hands of the Company's managers, the debts were underſtood by them to be diſcharged. The tranſactions, however, were never in any manner

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communicated to the Proprietors at any general meeting, and of courſe were never approved of by them.

The affairs of the Company fell into much diſorder and imbarraſſment after the failures in June 1772. That unhappy criſis of our fate was ſucceeded by the annuity-tranſaction; and the calamities which ſurrounded us being ſo numerous and ſo alarming, many particulars in our affairs, which, compared with greater objects of diſtreſs then preſſing upon us, did not appear of ſuch high moment, were not attended to. It was not then the proper ſeaſon of inquiry. We had not yet finiſhed a moſt unproſperous voyage; the veſſel in which we were imbarked had become the deſtined ſport of multiplying ſtorms; and to avoid a total ſhipwreck was the chief object of our attention. It ought not therefore to excite much wonder, that, during ſo diſaſtrous a period, the nature and effect of the above, as well as of many other tranſactions lately brought under our view in the Report of the Committee of Inquiry, eſcaped the notice and obſervation of the Partners.

To this hour, however, it will be obſerved, that no general meeting of Proprietors has ever given their ſanction to theſe tranſactions. They reſt ſolely upon the act and proceedings of our Managers, during the period immediately ſubſequent to June 1772; and the particulars of the tranſactions were not till of late made known to the Partners. The balances accordingly of the compounded debts ſtill remain, *ex facie* of the books, a part of the Company's funds; nor has there been any transfer of thoſe balances to the debit of Profit and Loſs; which, upon the ſuppoſition that the diſcharge of the debts was effectual, there ought to have been; but which could not have been made without the authority of a general meeting of Proprietors.

The Report of the Committee of Inquiry, after narrating fully the particulars of the tranſactions of compoſition, has ſuggeſted the grounds upon which theſe tranſactions ought not to be effectual againſt the Company. It ſets forth, in the *firſt* place, That the Directors had no power to compound any debt due to the Company, without the conſent of the Proprietors: That ſuch a tranſaction was not an act of ordinary adminiſtration, by which they could bind the Company at large: That it was an act which required ſpecial powers from the Proprietors, in order to give it validity; and that neither by the contract of copartnery, nor by any ſubſequent reſolution of the Proprietors, had ſuch power been committed

committed to our Managers. 2*dly*, That although ſuch powers had been committed to our Managers; yet in this inſtance theſe powers had not been exerciſed by any competent legal meeting of Directors, but by meetings where no quorum was preſent. And, 3*dly*, That the tranſactions had been concluded without any ſufficient or ſatisfactory evidence, with reſpect to the real ſtate of the affairs of the bankrupts.

Upon theſe grounds it is ſuggeſted in the Report, that the tranſactions may be ſet aſide at the inſtance of the Company. If we ſhould ſucceed in doing ſo, the conſequence will be, that although the compoſitions may be effectual againſt other creditors; yet the perſons whoſe debts to us are ſaid to be compounded, will ſtill remain our debtors in the full amount of their debt, after deduction of ſuch partial payments as may have been received; and from the preſent apparent independence or opulence of thoſe perſons, we might have good reaſon to expect a full recovery of the debt.

The queſtion agitated in the Report is of great importance; — the material facts are uncontroverted; — the argument in behalf of the Proprietors appears to be ſolid, and the ſtake is deep; — upwards of L. 35,000 of the Company's debts is ſaid to have been diſcharged for a fourth part of the value, by the act of a few of our Directors, without our own conſent or approbation; — and if a full recovery of the debt can be effected, it will make a material difference upon the ſtate of our affairs. It will bring relief to all, and may be the means of ſaving to ſome of us a ſmall remainder of our fortunes. We may feel, and as men we are bound to feel, for the diſtreſſes of others; but amidſt the preſent unexampled exceſs of adverſity which preſſes upon us, every juſtifiable motive concurs in prompting us firſt to endeavour to alleviate our own.

In anſwer to that part of the Report which treats of this ſubject, and in juſtification of the tranſactions complained of, a Letter under the ſignature of JOHN FORDYCE, addreſſed to the Proprietors of Douglas, Heron, and Company, has lately appeared. In this letter an elaborate detail is given you of the riſe, nature, and progreſs of the different accounts, tranſactions, and ſettlements, which took place betwixt him and his copartners on the one part, and the Edinburgh Branch of Douglas, Heron, and Company, on the other part. But as it does not differ from the Report of the Committee of Inquiry in any of the material facts

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which give riſe to the queſtion between them and us; ſo neither does it in any degree affect the argument which ſeems to demonſtrate the invalidity of the tranſaction. The letter is wrote with accuracy, with ability, and with temper; and I am unwilling to deny it any praiſe that juſtly belongs to it: But as the chief characteriſtic of it, in my opinion, is art; and as the tendency of it ſeems to be to withdraw your attention from what is your ſubſtantial concern, and to amuſe you with details which can only intereſt thoſe who were the immediate actors in them, it may not be improper to make a few remarks upon that performance, and to recal your attention to the genuine merits of the caſe, as laid before you in the Report.

I judge it altogether unneceſſary to enter into any particular examination of the truth of that anxious narrative which the author has been at ſuch pains to form, with reſpect to the origin, nature, progreſs, and apparent ſtate of the different accounts, tranſactions, and ſettlements, which took place between him and his Partners, and the Edinburgh Branch of Douglas, Heron, and Company, prior to the failure of the former in June 1772. A great part of the Addreſs indeed is employed in this elaborate detail; but as it does not ſeem in any degree to affect the merits of the queſtion at iſſue, I ſhall confine myſelf to a few general remarks upon that part of the performance.

From the manner in which theſe tranſactions are ſtated, — from the ſtyle in which the detail of them is wrote, — from the mode of expreſſion every where adopted, — from the ſpirit of independence, and even of accuſation, which it breathes, — and from the egotiſm of his ſufferings, contraſted with the ſupport which, he ſays, he at all times gave you, — one would imagine, that the author of this Addreſs to you had been the injured perſon; that his ſufferings had been unexampled, and ought to have been transferred to you; and that the loſſes which you incurred by your connections with him and his partners, were far leſs than they ought to have been: in ſhort, that he alone had been the unhappy victim, and that you had aſſiſted at performing the ſacrifice. — But when the ſituation and circumſtances of the parties are conſidered, the propoſitions I have mentioned, and which the perſon who addreſſes you ſeems deſirous to eſtabliſh, bear ſuch ſtrong interior evidence againſt their own credibility, — that it ſeems almoſt unneceſſary to expoſe the fallacy which charac-

teriſes his narrative, although it was more impenetrable than it really is.

Much art is employed in ſeparating the views of the ſeveral accounts and ſettlements which took place at different periods; and by ſhowing the effects of each, with an appearance of candour, oſtenſible balances upon them are exhibited as againſt you, in favour of Mr Fordyce and his partners. But, at the ſame time, care is taken to conceal the complex view of the whole exiſting tranſactions between the parties at theſe periods; although, from this view alone, the actual exiſting riſk at any one time can be diſcovered. The deep circulation in which our Managers unfortunately embarked with theſe gentlemen from the very commencement of our buſineſs; the vaſt quantity of their paper, which, in conſequence of this connection, was at all times in our poſſeſſion, and for which we paid them full value in caſh, or in bills upon our correſpondents; the conſtant danger to which we were by this means expoſed during the whole period of our tranſactions with them; and which, in the end involved us in ſuch multiplied calamities, while, at the ſame time, it cannot be pretended, that they run any riſk from the counterpart of the circulation, for which our Company was bound;—none of theſe particulars are brought under your view: And the reader, after being led through a labyrinth of accounts and ſettlements, by which he is ſeduced into a belief, that, at every period of our tranſactions, and even at the ſettlement in June 1772, Mr Fordyce and his partners were our conſtant creditors, finds, to his aſtoniſhment, an inſtant reverſal of their ſituation. The ſcene is quickly changed; and they that even now *figured* as our creditors, emerge at once our debtors, to the extent of no leſs than L. 22,373, the ſum upon which the compoſition was offered.

Vide p. 8. of the Letter.

In ſearching for a ſolution of this enigma, a little reflection ſoon detects the fallacy: *Latet anguis in herba.* The accounts and ſettlements upon which theſe boaſted balances appeared due, were, from the nature of our tranſactions, hypothetical, as all accounts during the period of ſuch tranſactions muſt be; nor could any true ſtate of matters between you and them be obtained, until there was an end of your tranſactions, and until the conſtant danger ariſing from their paper in your poſſeſſion was removed, or the charge againſt them, in conſequence of the

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diſhonour of their bills, was brought to their debit. It was thus with you in June 1772. The account, as then ſtated between you and Mr Fordyce and his partners, was from the nature of the tranſactions between us hypothetical. The balance ariſing upon it againſt you, was conjectural, liable to ſad variations, and depending upon calamities which were about to happen. An actual riſk exiſted, to which you were then expoſed; and ſo ſoon as this iſſued in actual misfortunes, you immediately became creditors in a vaſt ſum to thoſe to whom you had lately appeared to be debtors. It is fit, therefore, that you ſhould beware of the deceitful evidence ariſing from accounts of this nature: under the cover of apparent ſafety, they hide real danger. They may be compared to the Trojan horſe, which was found full of armed men: and I may be permitted to give you the warning which was given upon that occaſion, *Equo ne credite, Teucri.*

The author of this Addreſs to you, frequently inſinuates, that the whole of the tranſactions between him and you were ſolicited by your Directors, and entered into for your ſupport and relief alone, without being attended with reciprocal advantages to him and his partners. The deplorable ſtate to which the affairs of our Company were very quickly reduced by the bad management of our Directors, is one of the chief grounds of our complaints againſt them, as well as one of the qualifications of our damage; and the nature of thoſe hazardous connections which, by that means, they found themſelves obliged to form with Mr Fordyec, and other dealers in fictitious bills, they are beſt able to explain. It is a matter of ſmall moment to the partners of the Company; but that this unhappy traffic was not attended with reciprocal advantages to Mr Fordyce and his friends, is an inſinuation, the incredibility of which, all circumſtances conſidered, is a ſufficient guard againſt the effects of it upon any perſon of the leaſt intelligence or reflection. It ſeems, however, to be urged with peculiar indelicacy, and ought not therefore to eſcape animadverſion. It is well known, that Fordyce, Malcolm, and Company, and Fordyce, Grant, and Company, two houſes, conſiſting of the ſame members, though aſſuming different firms, had been ſkilled in the arts and devices of circulation long before our eſtabliſhment as a Company. They, as well as many others in this country, then depended on it for their very exiſtence in the commercial

mercial world; and they remained entangled in its fetters until their ſplendid bankruptcy in 1772. Is it poſſible therefore to imagine, that, to the mere creatures of circulation, a connection with a Company, for whoſe tranſactions the ſecurity of a great part of a kingdom was pledged to the public, was not a deſirable object? Is it not ſelf-evident, that ſuch a connection would be attended with advantages infinitely more conducive to the ſupport of their credit than to the ſupport of ours? Does not the author himſelf admit, that they alſo received commiſſion, &c. from us upon the very bills they themſelves drew? And now when we have an opportunity of reaſoning from effects to cauſes, can it admit of a doubt, that the name of our Company, mingling with their tranſactions, and adding credit to them, muſt have prolonged their exiſtence, as well as the exiſtence of other adventurers in that branch of buſineſs?

We are told by the author of this Addreſs, That the tranſactions between him and us were not only for our ſupport and relief alone, without any reciprocal advantages to him and his partners; but that his loſſes and ſufferings by thoſe tranſactions have been greater than ours. In particular, he inſiſts much upon this topic, when he treats of that branch of the circulation in which we were concerned with him, whereby he drew bills in our favour upon Alexander Fordyce, for value paid by us to him in bills upon our correſpondents. His loſs, by this tranſaction, he repreſents as far greater than ours. But there is ſo much fallacy in his reaſoning upon this ſubject, that although I do not mean critically to examine and analyſe every part of his performance, I cannot permit this inſtance to paſs unnoticed.

Admitting the facts to be as ſtated by himſelf, it appears, that, previous to his drawing upon Alexander Fordyce in our favour, he had remitted the value to him; and he will not ſurely diſpute his having received full value from us for the bills he drew, beſides commiſſion, &c. The value, therefore, which he thus received, replaced the value which he ſays he had previouſly remitted; and conſequently his funds remained the ſame as they were before the tranſaction exiſted. Such being the caſe, the only effect of the tranſaction on his affairs was, that by the return of his bills, to the amount of L. 11,200, his eſtate was loaded with ſo much additional debt, which in the perſons of the holders of the bills

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fell to receive a correſponding dividend, not only from the eſtate of Alexander Fordyce, but from his own eſtate.——He ſays, p. 10. That as he was not intitled to draw upon Alexander Fordyce until he firſt remitted him, and as the tranſaction was ſolicited by our Directors for our ſupport, the whole conſequences of it ought to have reſulted upon us; and that he ought to have ſtipulated with our Directors, that this ſhould be the caſe, but omitted to do ſo. But if he is ſerious in making this obſervation, there is a confuſion, or a refinement, in the idea, which unhinges every commercial principle. We had nothing to do with the particular nature of that gentleman's connections with Alexander Fordyce. He certainly had his own reaſons for forming and cultivating thoſe connections; and as he had a power, as he ſays, to draw in a certain way upon Alexander Fordyce, it was ſurely intended that he ſhould make uſe of that power when he found it his intereſt to do ſo. It accordingly appears, that he was deeply involved in this circulation; and as, in this inſtance, he received from us full value for ſuch bills as he drew in our favour, beſides the commiſſion and charges, which he himſelf admits we paid, both upon the bills we received and upon the bills we gave, it was reaſonable and juſt, as well as perfectly agreeable to univerſal practice, that when the bills which he drew were diſhonoured in London, they ſhould return upon him for payment.——As to the ſtipulation of riſk with our Directors, which he pretends to have *omitted*, ſuch a propoſal would not only have been abſurd in itſelf, and humiliating and diſgraceful to the laſt degree in our Directors, to have agreed to, but would alſo have blown at once the credit of thoſe very bills which he now holds out as ſo favourite an object at that period.

Part of the L. 11,200 of bills drawn in our favour upon Alexander Fordyce, and diſhonoured in London, were returned upon us, and paid. The loſs thence ariſing to us, as ſtated by Mr Fordyce himſelf, amounted to L. 1387, 10s.; and in treating this ſubject, he ſeems every where anxious to contraſt the large ſum of L. 11,200, which came back, he ſays, upon his eſtate, with the ſmaller ſum of L. 1387, 10s. which he ſays was *all* the loſs we ſuſtained by the tranſaction. *Vide* p. 10. of Letter.

Upon the whole of this tranſaction, he aſſerts, that the loſs *he* ſuffered was far greater than ours. Let us now examine the juſtice of his reaſoning upon the ſubject. There was added, as he

ſays, to his debts, in conſequence of this tranſaction, the ſum of L. 11,200. But his debts upon which the compoſition of 6 s. 6 d. a-pound was offered, being upwards of L. 240,000, it follows, that if the above tranſaction had never exiſted, his debts might have been about L. 230,000, his funds remaining the ſame as they actually were. If this had been the caſe, the dividend or compoſition of 6 s. 6 d. a-pound, allotted to the L. 11,200 of additional debt, being L. 3640, might have occaſioned an additional dividend, or afforded an additional compoſition to the creditors of about 3 d. a-pound. So that if the tranſaction had never exiſted, Mr Fordyce would have been a bankrupt at the rate of 6 s. 9 d. a-pound; and as matters ſtood, he was a bankrupt at the rate of 6 s. 6 d.

Such was the real effect of the tranſaction upon Mr Fordyce's eſtate. His creditors may be ſaid to have thereby ſuffered the loſs of a dividend of about 3 d. a-pound of their debts. But as to Douglas, Heron, and Company, it is plain, that they ſuffered a twofold loſs by that tranſaction. *Firſt*, Mr Fordyce himſelf admits, that by the return of part of the bills they ſuffered an actual loſs of L. 1387, 10 s. which they would not have ſuffered if the tranſaction had never exiſted. *2dly*, As the dividend or compoſition, in that caſe, would have been 6 s. 9 d. inſtead of 6 s. 6 d. they loſt the benefit of the additional three pence a-pound upon the debt which would then have been due them *.

Such being the true reſult of the tranſaction to all concerned, it is difficult to conjecture the meaning of the author of this Addreſs, when he ſo frequently aſſerts, that *he himſelf* ſuffered materially by this tranſaction. " I ſhall now," ſays he, p. 9. " ſhow " the loſs which in the end I ſuffered upon theſe tranſactions, in " conſequence of the misfortunes which happened in June 1772." P. 10. " And that this heavy loſs did fall upon me, and not upon " you, was entirely owing to an omiſſion of my own." P. 11.

* *Nota*, The amount of the debt, as actually due, was L. 22,373; and if from this is deduced the L. 4500 of Alexander Fordyce's bills, which in the perſon of the company became a charge upon the eſtate of John Fordyce, the debt would, in that caſe, have been L. 17,873, and the additional 3 d. a-pound thereon would have amounted to L. 223 : 8 : 3; ſo that the Company, inſtead of loſing L. 1387, 10 s. would have gained L. 223 : 8 : 3.

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" The conſequence has been, that the loſs which I have men-
" tioned upon your tranſactions, which ought in juſtice to have
" fallen upon you, has fallen upon me." P. 20. " You and I
" both ſuffered in the general calamity; but I ſuffered far the
" moſt." From the account I have given of the tranſaction alluded to in theſe paſſages, Mr Fordyce's creditors, not himſelf, were the only ſufferers; becauſe, as has been ſhown, they ought to have got an additional compoſition of 3 d. a-pound of their debts, if that tranſaction had never exiſted. When, therefore, he holds himſelf out as the unhappy ſufferer, the aſſertions are unguarded. They attack either the heart or the underſtanding. They attack the *former*, if he himſelf is conſidered as the ſufferer; becauſe he can be conſidered to be ſuch in no other way than by ſuppoſing, that if the additional debt of L. 11,200 had not been a charge upon his eſtate, the compoſition would have been ſtill the ſame as it actually was, whereby he would have pocketed the compoſition of 6 s. 6 d. a-pound, correſponding to the above ſum, inſtead of dividing it among the creditors. They attack the *latter*, if his creditors alone are to be conſidered as the ſufferers, ſince it is difficult to perceive what title he has to transfer to himſelf the ſufferings of his creditors, and to endeavour to awaken in his own favour that ſympathy which belongs to the diſtreſſes of others. Had the conſequences of that tranſaction been much more calamitous to his affairs; could he have ſaid, that if it had never exiſted, he could have paid twenty ſhillings a-pound to his creditors; ſtill he himſelf could not, with any propriety, have been denominated the ſufferer. In this, as well as in the caſe which has actually happened, his affairs would have been in a bankrupt ſtate: in both caſes, his creditors would have been the ſufferers; becauſe in both they would have recovered leſs than their debts: in both caſes his eſtate would, or ought to have been exhauſted.

In this, as well as in other inſtances, the plan of the author ſeems to be, to magnify his own ſufferings, and to leſſen thoſe of his creditors. He has accordingly, upon ſeveral occaſions, affected to repreſent the loſſes ariſing to the Company through their connections with him and his partners, as trivial and inſignificant; and, in particular, he is at pains to prove, by a long deduction, p. 13. that upon tranſactions to the amount of L. 29,620, the loſs ſuſtained by us was *no more*, he ſays, than L. 2816 : 6 : 10.

I ſhall only remark upon this very ſingular obſervation, that if we had loſt in this proportion upon every tranſaction we entered into, our capital muſt have been annihilated in a very few months. And the obſervation will appear ſtill more curious, when it is attended to, that at the very time when this loſs was incurred, we had actually incurred all the other loſſes which we ultimately ſuffered through our unfortunate connections with thoſe circulators.

Without entering into any further examination of the nature and ſtate of the accounts, tranſactions, and ſettlements, mentioned in this letter, previous to the failure of Mr Fordyce and his partners in June 1772, when it is an admitted fact, that we became creditors to them in no leſs than L. 22,373, I muſt now beg leave to recall your attention to the merits of the proper queſtion at iſſue, namely, Whether this large debt, acknowledged to be then juſtly due to you, is to all intents and purpoſes effectually diſcharged and extinguiſhed without your knowledge, conſent, or approbation, by the proceedings of ſome of your Managers ſubſequent to that period?

The particulars of the tranſaction of compoſition, by which this debt is ſaid to be diſcharged, are fully laid before you in the Report of the Committee of Inquiry; and one chief ground upon which it is ſuggeſted, that the tranſaction is not effectual againſt the Company, is, That the Directors had no power, either expreſs or implied, veſted in them by their conſtituents, which could authoriſe them to compound that, or any other debt contracted to the Company, or to enter into any tranſaction whereby ſuch debt was to be extinguiſhed and diſcharged for leſs than the value.

It is an admitted fact, that the contract of copartnery confers no ſuch powers upon your Directors. Indeed ſo far from this being the caſe, it appears upon peruſal of the contract, that ſuch ſuppoſed power in your Directors is inconſiſtent with one of the articles (art. 15.) expreſsly declared to be unalterable. I do not ſay, that in the ordinary tranſactions of copartnery ſpecial powers are neceſſary to render the deeds of individual partners, acting in name of the company, binding upon the whole; on the contrary, I am aware, that, in private copartneries, whatever may be the terms of the ſocial contract, the acting partners may bind the company at large in every matter of ordinary adminiſtration relating to the buſineſs of the copartnery, or neceſ-

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ſary for carrying it on, and that each Partner is underſtood to be intruſted with a power from the Company for that purpoſe. That principle which is the baſis of ſocial dealings, which, by giving ſecurity to the public, animates and gives credit to their tranſactions, requires that this ſhould be the caſe. Third parties tranſacting with a company, are not preſumed to know, and are not bound to inquire, what are the particular clauſes, terms, and regulations of the contract of copartnery. In dealing with the acting partners, they follow the faith of the whole; and it is juſt therefore in itſelf, as well as eſtabliſhed by commercial principles, that in tranſactions relating to the buſineſs of the copartnery, and where the faith of the copartnery is pledged to the public or to third parties, the act of one partner tranſacting in name of the copartnery ſhould bind the whole.

The ſame principles may perhaps prevail in a copartnery ſuch as ours, with this difference however, that as we were publicly and univerſally known to be a banking company tranſacting our buſineſs by a ſet of directors annually choſen, and through the channel of certain caſhiers, it may admit of doubt, how far the deeds of individual partners, not in office, acting in name of, but without powers from the company, would have been effectual againſt us.

But although, in matters of ordinary adminiſtration, and where the faith and ſecurity of the public is intereſted, it may be implied, in the nature of copartnery, that the acting partners may bind the whole; yet a variety of tranſactions may be ſuppoſed to occur, in which, as being beyond the ordinary powers of adminiſtration, the implied powers inherent in individuals muſt ceaſe, and in which ſpecial powers alone from the partners themſelves can give a ſanction and validity to the proceedings. This propoſition does by no means infringe the ſacred principle of copartneries above mentioned. The line of diſtinction ſeems obvious, between the caſe where the ordinary power of adminiſtration is ſufficient, and where a ſpecial power is required. Where the tranſactions are of ſuch a nature as relate to the proper buſineſs of the copartnery, or are neceſſary for carrying it on, and as intereſt the faith and ſecurity of the public or of third parties, the acting partners may bind the company

at large; but where the tranſactions are not of that nature, ſpecial powers are neceſſary from the partners themſelves to authoriſe the proceedings.

The tranſaction of compoſition, however, now under your view, was a tranſaction evidently beyond the ordinary powers of adminiſtration underſtood to be veſted in the partners of a company. It did not relate to the proper buſineſs of the Copartnery, which was to lend and to borrow money, nor was it in any ſhape neceſſary for carrying it on; the affairs of the Company would have moved on juſt as ſmoothly if the tranſaction had never exiſted; nor could any additional embarraſſment in the management have ariſen from a poſitive refuſal upon the part of our Managers to accede to the propoſed compoſition.—Neither can it be pretended, that there was here any engagement or obligation to be performed by the Company, in which the ſecurity of the public, or of third parties, was concerned in any reſpect.—The ſecurity of the Company indeed was to be diminiſhed, and an obligation of debt, which was a property veſted in each individual Partner *pro rata* of his concern in the Copartnery, was to be diſcharged and extinguiſhed for leſs than that value which had formerly been advanced and paid for it by the Company, and in reſpect of which the obligation was contracted.—In ſhort, the undoubted property of the Company was to be dilapidated: for altho' the funds of the bankrupts might not then be ſufficient to pay their debts; yet the obligation of debt, in ſo far as not extinguiſhed by payment, ſtill remained veſted in the Partners. And have we not all of us been forced to contribute our proportions of what became neceſſary in default of that debt for paying our own engagements? Do we not all of us this day labour under the preſſure of that additional incumbrance? and are not many of us now pledging our laſt ſtake, while the debt juſtly due us by theſe gentlemen might have rendered this effort unneceſſary?

Such being the caſe, it ſeems inconſiſtent with every principle, that the obligation of debt veſted in the Partners, ſhould be gratuitouſly diſcharged without their conſent or approbation: Gratuitouſly, I ſay, becauſe, in ſo far as the debt was not extinguiſhed by payment, it was altogether a gratuitous act in our Managers to take upon them to diſcharge the obligation of debt, which ſtill remained veſted in the Partners *pro rata* of their ſtock. This

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was a tranſaction which, from its nature, neceſſarily depended upon the voluntary act of the creditors themſelves: and as it will not be pretended that any private individual creditor was under the leaſt obligation to accept of this compoſition, and to diſcharge his debt againſt his will, however generally the other creditors might have agreed to that ſcheme; ſo the Partners of this Company, as the only proper creditors in the debt in queſtion, were alone intitled to form their own reſolutions upon the ſubject, and to accept of the compoſition or not as they thought fit. Indeed, as they were ultimately to be ſuch deep ſufferers by this act of benevolence, it was but reaſonable that they ſhould have a voice in deliberating upon it.

It has been urged in defence of this tranſaction, That private copartneries are in the practice of accepting of compoſitions; and that the acting partners are underſtood to bind the whole by agreeing to ſuch tranſactions in name of the company. How the fact may ſtand in the caſe of private copartneries, I do not pretend to ſay. I may venture, however, to affirm, that in every caſe of a private copartnery, where effectual tranſactions of this ſort have been entered into, circumſtances have occurred which eſſentially difference them from the preſent caſe. Perhaps the contract of copartnery will in ſome inſtances be found to confer powers to tranſact matters of that ſort; and there is in ſuch caſe an end of every objection ariſing from want of powers. Perhaps in ſome caſes the tranſaction will be found to have been homologated or confirmed by the acquieſcence of the other partners, or by ſubſequent ſettlements among them, after the loſs by the tranſaction has been brought to the debit of Profit and Loſs; but in ſocieties or copartneries ſuch as ours, and circumſtanced as we now are, I am perſuaded no precedent will be found of a tranſaction of this nature and extent entered into by the managers or acting partners, without the conſent of their conſtituents having ever been found effectual againſt the Partners at large.

It will tend to illuſtrate the preſent argument to obſerve, that by the opinions of our writers on the law, and by the deciſions of our ſupreme court, it ſeems eſtabliſhed, that the acting partner of a private company cannot, without ſpecial powers, bind his fellow-partners, by entering into a ſubmiſſion, for himſelf, and in name of the company, of a company-claim; and that any decree-

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arbitral pronounced upon ſuch a ſubmiſſion will have no operation againſt the company. If this therefore is eſtabliſhed in the caſe of a ſubmiſſion, it follows *a fortiori*, that the acting partners of a company cannot, without ſpecial powers from their fellow-partners, enter into a tranſaction of compoſition, which is a ſtill ſtronger act than that of a ſubmiſſion: for in the caſe of a ſubmiſſion the claim itſelf is ſuppoſed to be doubtful; and the arbiter is only to determine what would otherwiſe be determined by a court of law; whereas, in the caſe of a compoſition, the debt is acknowledged and aſcertained, and the tranſactors take upon them to diſcharge a confeſſed obligation of debt for leſs than the value; or, in other words, gratuitouſly diſpoſe of the property of their fellow-partners; ſince, as has been ſhown, it is a gratuitous act in ſo far as the debt is not extinguiſhed by payment.

The acting partners therefore of a company, cannot, without ſpecial powers from their fellow-partners, enter into ſuch a tranſaction: and as it will not be maintained, that our Directors had more extenſive powers than the acting partners in private copartneries, I apprehend it is clear, that the tranſaction of compoſition complained of could not be effectually entered into without ſpecial powers from the Proprietors. Without ſuch powers, our Directors had no title to engage in it; and as it is not pretended, that any powers were ever given them for that purpoſe, their proceedings muſt be ineffectual, and the perſons whoſe debts they have pretended to compound and diſcharge muſt ſtill remain debtors to the Company in the full amount of their debts, deducing ſuch partial payments as may have been received, in the ſame manner as they remain debtors to ſuch of their creditors as never acceded to the compoſition. Indeed it does not occur, that there is any ſolid ground for diſtinguiſhing between the Partners of our Company who never approved of or homologated the tranſaction of compoſition ineffectually entered into by our Managers, and ſuch of the creditors of Mr Fordyce and his partners as never acceded to the compoſition; ſeveral of whom, it is believed, have recovered the full amount of their debts; and others of them, it is well known, are in the courſe of being paid.

Upon conſidering the terms of our contract of copartnery, and the nature of the tranſaction of compoſition complained of, I am led to think, that not only the Directors of our Company had no

power

power to enter into ſuch a tranſaction, but that not even a general meeting of Proprietors had power to authoriſe it to the effect of binding abſent or diſſenting Partners. No power, it will be obſerved, is by our contract veſted in general meetings in matters of that ſort. On the contrary, it ſeems adverſe to and incompatible with the 15th article of the contract, which is declared to be immutable; and it does not therefore occur, upon what principle of law, or of juſtice, any general meeting could have authoriſed a tranſaction of this ſort, by which the property of the Partners was to be taken from them, and gratuitouſly given away, without their own conſent. Let it be ſuppoſed, that propoſals for this tranſaction of compoſition had been regularly laid before a general meeting of Proprietors, and that the majority of the Partners preſent ſhould have been diſpoſed to authoriſe the tranſaction, while the minority diſapproved of or proteſted againſt it; is it poſſible to imagine, when the terms of our contract are conſidered, that the proceedings of that majority could have had any operation againſt the diſſenting partners, ſo as abſolutely to diſcharge their intereſt in the obligation of debt upon which the compoſition was to be taken?—This debt was veſted in the whole Partners of the Company *pro rata* of their ſhares of ſtock. They were each of them creditors to the bankrupt; and it would be inconſiſtent with the firſt principles of juſtice, that a right veſted in them ſhould, without their conſent, or without powers from them, be annihilated and diſcharged by the proceedings of a majority. The Partners compoſing ſuch majority might no doubt bind themſelves by their own act and deed, as much as any other individual creditors of the bankrupt; but they certainly could have no title to take upon them to diſcharge the intereſt of ſuch partners as had neither conferred powers upon them to do ſo, nor concurred in their proceedings.

If therefore the proceedings of a general meeting of Proprietors authoriſing ſuch a tranſaction, could not, in virtue of our contract of copartnery, have been effectual againſt abſent or diſſenting Partners, it ſeems altogether inconſiſtent to ſuppoſe, that the proceedings of a few of our Directors, without the knowledge or approbation of any general meeting, could have any operation againſt us; and therefore it appears to me upon the moſt ſolid grounds, that the tranſaction of compoſition muſt be conſidered

by any court of law, as altogether ineffectual againſt the Partners of the Company.

Beſides the general ground already mentioned, ariſing from a total want of powers in the Directors of our Company effectually to conclude a tranſaction of this ſort without the ſpecial conſent of the Proprietors, there are other grounds of challenge ſtated in the Report of Inquiry; and particularly it thence appears, That although the Directors had truly been veſted with ſufficient powers, yet ſuch powers were not, in this inſtance, exerciſed by any competent legal meeting of Directors, but by meetings where no quorum was preſent. This affords another moſt ſolid objection to the tranſaction; for there ſeems to be an end of every obligation, and of all legal adminiſtration, if tranſactions of this moment may be concluded without the requiſite quorum *. But as this, as well as the other grounds of challenge mentioned in the Report, are there fully treated of, it is unneceſſary for me to enlarge further upon them at preſent.

An attempt however is made in this Addreſs to perſuade you, that this tranſaction of compoſition was approved of by the general meeting of Proprietors in November 1772. — But it is equally falſe in fact as in argument, that this tranſaction was ever in any form or manner laid before or communicated to the Partners at that general meeting, or at any general meeting whatever. It is ſet forth in a note ſubjoined to p. 27. that an abſtract of the ſtate of the Company's affairs was laid before that meeting; and that a committee was named to explain the abſtract to every Partner who might demand inſpection or explanation thereof, or of the books of the Company; and from this it is argued, that the tranſaction of compoſition muſt be underſtood to have been laid before the Proprietors. But the nature of that abſtract, and the purpoſe of the appointment of the committee to explain it, are either miſunderſtood or miſrepreſented by the author. The ſole object in view at that general meeting was to get the burden of the annuities lately taken up, laid upon the

* *Nota*, Indeed if this is once admitted, it ſeems to follow, that a ſingle Director, nay any one individual of our numerous body of partners, might have effectually bound the Company in any tranſaction he thought proper, which is a propoſition that I imagine can hardly be maintained.

Company

Company at large; and the above meaſure was only meant to quiet the minds of the Proprietors at the time, and could not be attended with any conſequences, or lead to any diſcovery whatever. In particular, the abſtract alluded to could not, in any manner, make known to the partners the tranſaction of compoſition; becauſe, as the loſs upon that tranſaction was not brought to the debit of Profit and Loſs, and could not be ſo brought without the authority of a general meeting; ſo all that could be diſcovered from the abſtract of the Company's affairs was, that Mr Fordyce and his partners were due certain ſums to the Company: and theſe they ſtill appear to be due *ex facie* of the Company's books, no transfer of the balance of the debt having ever been yet made to the debit of Profit and Loſs.

Beſides, the leaſt reflection muſt ſatisfy any reaſonable man, willing to liſten to the plain information of common ſenſe, and not ſwayed by improper influence, that it was abſolutely impoſſible, from the nature of the thing, that the Partners of a Company, conſiſting of two three hundred members, who had intruſted the management of their affairs to Directors annually choſen, and who were aſſembled in a general meeting, to receive an account of that management, could, of themſelves, upon ſuch an occaſion, make any uſeful inveſtigation; or that they either had, or could reaſonably be ſuppoſed to have, any proper channel of information as to the ſtate of their affairs, other than the Report from their Directors. But to carry the matter ſo far as it is neceſſary for the author of this Addreſs to do, and to tell you, that a tranſaction which required your ſpecial approbation, *was actually laid regularly and fully before you, in the manner directed by yourſelves*, becauſe the tranſaction might have been diſcovered upon a full inveſtigation of the books and tranſactions of the Company, although the Report of your Directors was ſilent upon the ſubject, is not only a propoſition abſurd in itſelf, but, when all circumſtances are attended to, it ſeems to me to be adding inſult to injury. From this ſtyle of language, one would imagine, that, inſtead of our Directors being bound fairly to inform us of the particulars of their management, we were to be informed of nothing, unleſs we ſhould happen to diſcover their ſecrets by accident.

Vide Note, p. 28. of Letter.

As to the aſſertion, That the tranſaction was known to the Proprietors, I may well venture to ſay, that any knowledge which the Partners not immediately concerned in the tranſaction had acquired

red of it, was of a very looſe and general nature, founded upon imperfect conjectures and caſual reports, which it cannot be ſuppoſed could engage their attention, when the matter had never been laid before them in a conſtitutional manner; and I firmly believe, that at leaſt three fourths of the Partners, were not only then unacquainted with the ſtate of that tranſaction, and the particular circumſtances attending it, but remained ſo until theſe were lately made public by the Report of Inquiry.

The tranſaction of compoſition, therefore, can derive no aid from the proceedings of the General Meeting in November 1772: it muſt reſt entirely upon the validity of the previous proceedings of the Directors, as fully ſtated in the Report; and it cannot, by any fair argument, be maintained, that a tranſaction of this importance was actually known to, confirmed, and approved of by the Proprietors at a General Meeting; becauſe if theſe Proprietors had been led to make ſtrict inquiry into that matter, they might have been informed, and might have diſcovered how it really ſtood. Indeed the tranſaction of compoſition was never, in any ſhape or form, brought before or communicated to the Proprietors at any General Meeting whatever; and the only attempt which appears to have been ever made towards bringing it before them, is a requiſition upon the part of one of the Edinburgh Directors at a meeting of the 21ſt of July 1773, whereby he requires it to be entered in the minutes, that unleſs the ſettlement with Mr Fordyce did take place in a particular way, no ſettlement ſhould be made with him, " until the accounts, together with a ſtate of the affairs of Fordyce, Malcolm, and Company, and Fordyce, Grant, and Company, ſhould be laid before a General Meeting of Proprietors." This attempt, however, or intention of laying the matter before the Proprietors, never went further, and is only to be diſcovered upon a peruſal of the minutes of the Edinburgh Branch at that period.

Mr Fordyce ſeems confident of deriving much ſupport from the circumſtance of ſeveral ſettlements of accounts having taken place between him and the Managers of the Company after November 1772. He refers to ſettlements of the 12th March, 24th April, and 20th Auguſt 1773, and 22d Auguſt 1777; and he particularly founds upon a receipt or diſcharge of 20th Auguſt 1773, granted by Mr Home, the Company's manager; whereby he acknowledges the receipt of the compoſition-money, and grants

a diſcharge of the debt. Theſe ſettlements, and this diſcharge, he repreſents as importing an homologation of the tranſaction of compoſition, and as an effectual bar to any future recovery of the debt. But the plain and ſolid anſwer to every argument founded upon this topic, is, That one and all of theſe ſettlements proceed upon the ſuppoſition, that there had been an effectual tranſaction of compoſition previouſly entered into, which bound the Partners at large; and accordingly the accounts and diſcharge before mentioned bear expreſsly, *That the compoſition had been agreed to by Douglas, Heron, and Company.* This however is not the fact: the tranſaction, it has been ſhown, was never communicated to the Proprietors, but reſts ſolely upon the proceedings of a few of the Directors in the month of September 1772; and the very point in diſpute being, Whether Douglas, Heron, and Company were bound by theſe proceedings, it ſeems altogether inconſiſtent with the integrity of fair argument to ſay, that a diſcharge proceeding upon the falſe hypotheſis, That the Proprietors had actually agreed to the tranſaction, or upon the aſſumed hypotheſis, That they were bound by the proceedings of their Managers, can be pled as a confirmation of the tranſaction. If the compoſition was an effectual act, it neceſſarily implied a diſcharge as ſtrong as could afterwards be granted: and, on the other hand, it ſeems plain, that if the compoſition was not an effectual act, the diſcharge that was afterwards granted by our Manager, under the belief that the previous compoſition had been effectual, muſt fall to the ground. So that it is difficult to perceive how the ſubſequent diſcharge granted by Mr Home can in any ſhape affect the queſtion at iſſue.

Beſides, it is evident, that, when the circumſtances are attended to, the plea of homologation as ariſing from the ſubſequent ſettlements and diſcharge refutes itſelf. Had theſe been made or granted by the *Proprietors*, there might have been ſome foundation for the argument; but it will be obſerved, that the matter was never in any ſhape, or at any period, laid before them; and that the diſcharge is granted by Mr Home *as the Company's Manager*, and conſequently can have no greater effect than the act itſelf which is ſaid to be homologated. It has already been ſhown, that the Managers of our Company had no power, either expreſs or implied, veſted in them, which could authoriſe the tranſaction to the effect of binding the Partners at large; —it

has further been ſhown, that even a general meeting of Proprietors could not have authoriſed ſuch a tranſaction, to the effect of binding abſent or diſſenting Partners ;—and ſuch being the caſe, it is perfectly inconſiſtent to ſuppoſe, that the ineffectual act of the Managers originally agreeing to the compoſition, was homologated or confirmed by a ſubſequent act, equally ineffectual, of another ſet of Managers, in whom no ſufficient powers were or could be veſted for that purpoſe.

It is alſo pled in ſupport of the tranſaction, That it is homologated by the acquieſcence of the Company for ſo long a period : and this objection will no doubt meet us in every queſtion that may happen to be brought upon the Report of Inquiry. But when the ſituation of the Company and the accumulating ſcene of diſtreſs in which we were involved after the 1772 is attended to, I am perſuaded, that any argument founded upon ſuppoſed acquieſcence muſt be viewed in a moſt unfavourable light. We may be conſidered to have been for ſome time under a ſort of incapacity of inquiring into the particulars of our affairs ; and after a regular inquiry was appointed to be made, the affairs were found involved in ſuch obſcurity as almoſt baffled the attempts of thoſe who undertook the buſineſs.

I therefore apprehend, that neither the ſettlements and diſcharges founded on by Mr Fordyce, nor the ſuppoſed acquieſcence upon the part of the Company, can infer any ſort of homologation of the tranſaction entered into by our managers in the year 1772 ; but that the queſtion muſt be left to be determined upon its original merits, viz. the effect and validity of the proceedings of our Managers at that period to bind the Partners at large.

The Author of this Addreſs has endeavoured to juſtify the tranſaction of compoſition upon motives of expediency ; and he thence takes an opportunity of enlarging upon the beneficial tendency of the modern practice of compoſitions. No body will doubt, that the Author is ſincere in the obſervations he has made upon theſe favourite topics ; and had the conſent of the Proprietors of this Company been aſked when their property was about to be ſo freely diſpoſed of, arguments ſuch as theſe might, without impropriety, and with leſs indelicacy, have been made uſe of in order to induce them to conclude the tranſaction. What effect thoſe arguments might have had upon the Proprietors, I cannot pretend to ſay ; and although I think I might ſafely leave the author

thor in full poſſeſſion of what he has ſaid upon the ſubject, yet I muſt obſerve, that I cannot perceive the moſt diſtant expediency reſulting, in any view, to our Company from that tranſaction.

We unqueſtionably performed every engagement incumbent on us at that unhappy period. It cannot be pretended, that the tranſaction tended to relieve us of a ſingle difficulty, or that our affairs would have been in any degree more embarraſſed than they were, if our Managers had refuſed to accede to the compoſition. In what, therefore, conſiſted the boaſted expediency of this tranſaction, by which our Managers took upon them to diſcharge a large acknowledged debt for the trifling conſideration of 6 s. 6 d. a-pound, payable at a diſtant period? Is it to be imagined, that the Company would have recovered leſs than the compoſition-money, if the tranſaction had not been entered into, and if we had truſted for the recovery of our debt to the common courſe of events? And ſuppoſing there might have been ſome ſmall eventual ſhort recovery leſs than the compoſition, was this, in any reaſonable view, to be compared to the immediate and certain loſs brought upon the Company by an abſolute diſcharge of ſo large a debt? Much embarraſſment, and inextricable difficulties, are held out by the author as conſequences that muſt certainly have enſued to his affairs from a failure in the plan of ſettling by compoſition. What juſtice there may be in this, it is unneceſſary to inquire; ſince it will be obſerved, that though our Managers had refuſed to accede, it does not from thence follow, that the plan of a compoſition would not have taken place as to the other creditors who did accede. On the contrary, before the propoſals of compoſition were laid before our Managers, it appears, that the plan had been agreed to by the greateſt part of the creditors; and there was therefore no neceſſity for our Managers plunging ſo inconſiderately as they did into that tranſaction. Accordingly ſeveral of the creditors in fact never acceded; and it does not occur, that our Company could, in any point of view, have ſuffered, if our Managers had alſo refuſed to concur in the compoſition, or that we would have been in a worſe condition than the non-acceding creditors, who will without doubt render their whole debts effectual.

I cannot, therefore, diſcover any real expediency reſulting to us from this tranſaction; and, at any rate, if there was expediency in it, it was but reaſonable that the Partners themſelves, who were the proper creditors in the debt propoſed to be compounded,

pounded, ſhould be the judges of that expediency, and ſhould at leaſt have had the privilege of deliberating upon the ſubject.

Upon this ſubject of expediency, the author has further endeavoured to perſuade you, that the ſubſequent loan of L. 29,000, which he ſeems to view as a neceſſary appendage of the previous compoſition, as well as a confirmation of it, was likewiſe a beneficial and expedient tranſaction for you. This loan was another of the ſplendid tranſactions entered into by your Managers during that buſy period, without your knowledge, conſent, or approbation; although, at the very time it was granted, you were aſſembled in a general meeting.—It is unneceſſary to enlarge upon the particulars of it at preſent. They are fully ſtated in the Report; and let the diſguiſe thrown over it be ever ſo artful, it is impoſſible to perſuade any reaſonable man, that it was either prudent or juſtifiable to enter into that tranſaction, by which the name and credit of the Company was to be ſtill more proſtituted, by unneceſſarily throwing into the circle this large additional ſum of their bills at a period of ſuch diſtreſs. As to the pretence made uſe of in juſtification of the loan, namely, That large tangible funds were immediately impreſſed in the hands of the Company for anſwering their urgent neceſſities, it is like the empty *tub*, which is ſomewhere ſaid to be thrown out by ſeamen, upon certain occaſions; and which may be well known allegorically by the partners of this Company; and I am perſuaded, that the author would not have endeavoured to amuſe you with ſuch a *tale*, unleſs he had relapſed into that refined and dangerous ſpeculation which at former periods had ſo much enlarged and enlightened the ideas of our Managers.

Is it not obvious, that if we received any trifling preſent accommodation by that tranſaction, it muſt have been of a very temporary nature, gradually vaniſhing as the bills granted by the Company became due? And beſides, if the matter were candidly examined, it would appear, that the nature of the accommodation is by no means properly repreſented. In particular, you are told, that you borrowed L. 14,000 upon the eſtate of Torrerie; whereas the fact is, that there was no real money-tranſaction upon that occaſion: the only accommodation thereby procured to the Company was, that Mr Grant, the partner of Mr Fordyce, to whom the eſtate of Torrerie belonged, granted a bond upon it for L. 14,000 in favour of the Company, as in part of the funds impreſſed in their

their hands when they granted the loan to Mr Fordyce; and this L. 14,000 bond the Company afterwards conveyed to your parliamentary truſtees, and lodged with them along with your other heritable ſecurities. But when it is attended to, that the eſtate of Torrerie is very much inferior in value to the ſums ſecured upon it, and that the Company may of courſe be thrown into a large advance on that account, it will not appear that this was a very beneficial branch of the tranſaction. Indeed, it is certainly true, that inſtead of any ſubſtantial accommodation derived to the Company from that tranſaction, they had difficulty to get the funds impreſſed in their hands converted into caſh, ſo as to anſwer the bills as they became due; and they accordingly very ſoon fell in advance a conſiderable ſum, and remained ſo for two years, as Mr Fordyce himſelf admits.

The author has concluded his Addreſs with an offer which he makes you, and which ſeems to be as ſingular in its nature as it is ſingular in the circumſtances which give riſe to it. He ſays, That he and Mr Grant are ſufferers by the tranſaction of compoſition; and that, if you will take it off their hands, and come in their place, they will give you a premium of a thouſand pounds.

The idea of a man being a ſufferer by paying 20 s. a-pound of his lawful debts, is to me inconceivable; and therefore, after a man has diſcharged the full amount of his debts, whether from his own eſtate alone, or by the interpoſition of others, I could not help conſidering it as an abuſe of language, and as diſcovering a great want of propriety, if that man ſhould tell the world, that he was a ſufferer by paying his lawful debts. But if we ſuppoſe a man, who, finding his affairs in diſorder, has applied to his creditors, and prevailed on them to accept of a compoſition of 6 s. 6 d. a-pound in full of their debts, and who has actually made payment to them of that compoſition, it ſeems to be a moſt uncommon effort of gratitude and ingenuity in that perſon to endeavour to perſuade his creditors, and the world, that he has been a ſufferer by paying even that compoſition; more eſpecially when it is conſidered, that whatever was the ſtate of the affairs of the bankrupt, and admitting that his proper eſtate could not have yielded one ſhilling a-pound, it ought yet to be deemed by every reaſonable perſon a ſingular obligation conferred by the creditors upon

 him,

him, when they compound
thereby discharged 13 s. 6
These are strange peculi
made you.—As to the of
I have no particular kno
men, and cannot therefore
attend the transaction, up
was in their person, either
of their failure. The offe
upon their part; because t
theirs is such as renders it
cept of it: but although it
action itself might be supp
vantage or profit, I own I
coming to you from that
et dona ferentes; and there
chance of your accepting
warned you against it.

To conclude this long a
unhappy conduct of our M
fairs, has given rise, it mu
own resolutions, whether
clear, that the transactions
and that full and effectual
debtors, or whether you a
their lawful creditors, unti
supreme judges of your ri
once undoubtedly vested in
poses, absolutely and irre
for one fourth part of the
or approbation.

Though the unhappy bo
bear the name of Partners
tisfaction to think, that I
self to be,

The sincere

ounded at the rate of 6 s. 6 d. a-pound, and
3 s. 6 d. of their lawful debts.
peculiarities attending the offer which is now
he offer itſelf, I cannot judge of it, becauſe
knowledge of the affairs of thoſe gentle-
refore conjecture whether profit or loſs might
, upon a fair diſcuſſion of every eſtate which
either in poſſeſſion or in action, at the time
e offer, however, is made with great ſafety
auſe the ſituation both of your affairs and of
ers it altogether impracticable for you to ac-
ugh it was otherwiſe, and although the tranſ-
ſuppoſed to have a ſeducing proſpect of ad-
wn I can have no confidence in any liberality
that quarter: *Quicquid id eſt, timeo Danaos*
therefore, if there had been the moſt diſtant
epting of the bribe, I ſhould certainly have
t.
ong and diſagreeable diſcuſſion, to which the
our Managers, at a former period of our af-
it muſt be left with yourſelves to form your
ether you will hold it is a point indiſputably
ctions of compoſition are binding upon you,
ctual diſcharges are thereby granted to your
you are inclined ſtill to conſider yourſelves as
s, until you are taught by the ſentence of the
our rights and properties, that this large debt,
ſted in you, has been, to all intents and pur-
d irrevocably diſcharged by your Managers
f the value, without your knowledge, conſent,

opy bond of union, which compels us all to
rtners, muſt ſtill ſubſiſt; yet I have the ſa-
that I remain, what I have ever profeſſed my-

incere friend of the injured among us,

A PARTNER.